

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-cv-21301-GAYLES**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al.*,

Defendants,

JAY CONSTRUCTION MANAGEMENT, INC.,
et al.,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P., Q BURKE
MOUNTAIN RESORT GP SERVICES, LLC,

Additional Defendants.

**SUPPLEMENTAL MOTION TO ADDRESS THE COURT'S CONCERNS AND
APPROVE DISBURSEMENT OF ATTORNEYS' FUND**

Daccache Interim Class Counsel, on behalf of the 13 law firms submitting claims to the Jay Peak Raymond James Attorneys' Fund (the "Investors' Attorneys" or "Investors' Counsel"), moves to address the Court's concerns and for the Court to approve disbursement of the Attorneys' Fund pursuant to the terms of the Settlement Agreement and their agreed allocation.

The Settlement Agreement was the result of hard fought litigation and months of negotiations, and the work of the Investors' Attorneys was instrumental to that result. *See* Notice of Proposed Allocation of the Attorneys' Fund for Court's Final Approval, D.E. 343, attached as Exhibit 1. The Investors' Attorneys litigated five separate actions in Federal and State courts and arbitration, expending over 19,700 hours in time valued at \$9,391,841.80 in lodestar, as well as

\$235,000 in out-of-pocket expenses, all at their own risk. Their work¹ — coordinating prosecution of civil cases against Raymond James, including a class action on behalf of all investors, negotiating settlement terms with the Receiver, and preparing for trial, including interviews and investigations with investors and witnesses, subpoenas and document requests litigated in multiple hearings, depositions of key witnesses, litigating motions to dismiss and other motions — was a tremendous coordinated effort that exerted enormous pressure on Raymond James. The dispute would not have settled at all without releasing the claims mustered by Investors' Counsel, and Interim Class Counsel's participation in the mediation vastly drove up the monetary terms of the settlement.² Thus, as the Receiver and his counsel have acknowledged, the settlement was a team effort. For these reasons, the Receiver appropriately supported the \$25 million fee application under consideration. Should the Court have any doubts about the value of the Investor Counsel's work or the benefits that they conferred, Investors' Counsel propose a brief evidentiary hearing in which the Court could hear from the mediator Bruce Greer and the involved participants at the mediation - Michael Alford (deputy general counsel for Raymond James & Associates, Inc.), Stanley Wakshlag (counsel for Raymond James & Associates, Inc.), Receiver Michael Goldberg, Jeffrey Schneider (counsel to the Receiver), and Harley Tropin and Tucker Ronzetti (interim class

¹ Interim Class Counsel led the coordinated litigation, including discovery against Raymond James, noticing and taking the depositions of key Raymond James witnesses, and filing and arguing discovery motions.

² None of this is to take away from the efforts of the Receiver and his counsel who have spent enormous energy litigating the Estate's claims, running the business of Jay Peak, obtaining green card status for investors, initiating and spearheading negotiations with Raymond James, and devising the settlement plan the Court has just approved. Additionally, the work of the S.E.C. in investigating and obtaining the injunction, and the enormous judicial effort of this Court in supervising this case, entering the preliminary injunction order, and handling the judicial oversight of this multi-party multifaceted case deserve appreciation and recognition.

counsel). Investors' Counsel would be happy to respond to any concerns or questions the Court may have.

An integral part of the Settlement Agreement is the Attorneys' Fund and the procedures relating to it. By its terms, the Attorneys' Fund is "to reimburse costs and compensate the plaintiffs' attorneys in the Investor Class Action, the Other Investor Actions, or who otherwise claim to represent Investors" D.E. 315-1, Para. 3(d)(viii). The Settlement Agreement does not allow the use of the Attorneys' Fund in any other manner. It contemplates only that "in the event that the District Court in the SEC Action approves a total amount to be disbursed from the Attorneys' Fund that is less than the full amount held in the Attorneys' Fund, that difference shall be promptly disbursed as follows: Seventy Five Percent (75%) to Raymond James; Twenty Five Percent (25%) to the Receiver to be used for the benefit of the Receivership Estate." *Id.*

The Receiver, who was on the front lines and evaluated the contributions of Investors' Counsel, has agreed that the Attorneys' Fund will be used to compensate Investors' Counsel, specifically promising to "support[] ... the application by Class Counsel and the other plaintiffs' attorneys for the award of attorneys' fees and expenses in an aggregate amount not to exceed Twenty Five Million Dollars (\$25,000,000.00)." *Id.* The S.E.C. reviewed the Settlement Agreement and did not object to this language. No investor objected — in fact, no person or entity whatsoever objected — to the Attorneys' Fund or the claims of Investors' Counsel. The time for any objections has long passed, so any other position has been waived.

It is true that the Attorneys' Fund is "subject . . . to the approval of the District Court in the SEC Action" Settlement Agreement, D.E. 315-1, para. 3(d)(viii). The Agreement cannot, however, be rewritten. *See Holmes v. Cont'l Can Co.*, 706 F.2d 1144, 1160 (11th Cir. 1983)

(“Courts are not permitted to modify settlement terms or in any manner to rewrite the agreement reached by the parties.”) (citations omitted).

Neither *should* the Agreement be revised, even if that were possible, because it is fair and appropriate. Revising the Agreement would also undermine the interests of the investors. The Attorneys’ Fund was created not only to award compensation to the attorneys, but to benefit the investors who are represented by those attorneys, because attorneys submitting claims agreed not to seek payment from their clients from proceeds of the settlement. The Investors’ Attorneys have contingency agreements with their clients, and would often have received higher compensation through those agreements. The 16.66% fee award to Investors’ Counsel would be half of the percentage used in a typical contingency agreement. Applying typical contingency fees to the recoveries of Phase VII investors alone, without considering any other group, would amount to over \$22 million. Taking away compensation from the Investors’ Attorneys who relied on the Attorneys’ Fund would be unfair, because they relied on good faith application of its terms in giving up their contractual contingency fee rights, which substantially benefitted the investors.

CONCLUSION

For the foregoing reasons, the Court should approve the award of the Attorneys’ Fund to the Investors’ Attorneys pursuant to the Settlement Agreement and their agreed allocation. Alternatively, if the Court continues to have concerns, Investors’ Counsel would welcome a hearing as described above to address them.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via CM/ECF and also served on July 3, 2017 on the Receiver and Raymond James & Associates, Inc., via the manner stated in the service list below

By: /s/ Harley S. Tropin

SERVICE LIST

<u>Via E-Mail</u>	<u>Via E-Mail</u>
Jeffrey C. Schneider, Esq. jcs@klsg.com Levine Kellogg Lehman Schneider + Grossman LLP 201 South Biscayne Boulevard 22nd Floor, Miami Center Miami, Florida 33131 <i>Attorney for the Receiver, Michael Goldberg</i>	Stanley H. Wakshlag, Esq. shw@knpa.com Deborah S. Corbishley, Esq. dsc@knpa.com Kenney Nachwalter, P.A. Four Seasons Tower Suite 1100 1441 Brickell Avenue Miami, Florida 33131 <i>Counsel for Raymond James & Associates, Inc.</i>

10M7856

EXHIBIT 1

UNITED STATES DISTRICT COURT
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SECURITIES AND EXCHANGE COMMISSION,

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MOUNTAIN RESORT GP SERVICES, LLC,

Additional Defendants.

**NOTICE OF PROPOSED ALLOCATION
OF THE ATTORNEYS' FUND FOR COURT'S FINAL APPROVAL**

Before the Court for final approval is a Settlement Agreement and Release (“Settlement Agreement”) (D.E. 315-1) achieved through the efforts of both the Receiver and Interim Class Counsel¹ (“Class Counsel”) as well as investors’ counsel in several related actions, all litigated in coordination against Raymond James. The Settlement is an extraordinary achievement, a \$150 million cash recovery with substantial funds readily available. It has been *unanimously* accepted by the class, with not a single objection by the 836 investors defrauded in the Jay Peak scheme. The Settlement creates, subject to the Court’s approval, an Attorneys’ Fund of \$25 million, amounting to 16.66% of the recovery, well beneath the Eleventh Circuit’s 25% benchmark. The Receiver supports the establishment of the Attorneys’ Fund, and all investors’ counsel seeking compensation from that fund have agreed to its allocation pursuant to the Settlement procedures approved by the Court. Accordingly, Class Counsel, on behalf of all participating counsel, notify the Court for its final approval, that the thirteen participating law firms have agreed on allocation of the \$25 million Attorneys’ Fund.²

I. BACKGROUND

A. The Raymond James Litigation

The settlement in this case is the result of coordinated litigation by the Receiver and Class

¹ Interim Class Counsel refers to the firms of Kozyak Tropin & Throckmorton, LLP (“Kozyak Tropin”), Bennett Aiello, Girard Gibbs LLP, and Berman DeValerio, in *Daccache, et al. v. Raymond James & Associates, Inc., et al.*, No. 16-cv-21575-FAM (S.D. Fla.) (the “Daccache Action”). On May 19, 2016, the Court in the Daccache Action appointed Harley S. Tropin, Esq. of Kozyak Tropin Interim Class Counsel. *See* Daccache Action at D.E. 11. On August 18, 2016, the Court in the Daccache Action adopted a Case Management Order which appointed Harley S. Tropin, and in his absence, Thomas A. Tucker Ronzetti, as Chair Lead Counsel, and Paul Aiello of Bennett Aiello, Daniel Girard of Girard Gibbs LLP, and Kathleen M. Donovan-Maher, of Berman DeValerio to the Plaintiffs’ Steering Committee. *See* Daccache Action at D.E. 75.

² A proposed final order approving the Settlement Agreement is attached as Exhibit B to the Settlement Agreement. *See* D.E. 315-1.

Counsel in the Daccache Action and the other actions filed by the investors.³ (Ronzetti Decl. ¶ 5.)

a. The Daccache Action

Filed on May 3, 2016, the Daccache Action was the first-filed investor action against Raymond James relating to Jay Peak. *Id.* ¶ 6. Three other federal cases soon followed both here and in Vermont, and multidistrict litigation was filed, *In re Jay Peak, Vermont EB-5 Investor Litigation*, MDL 2730. *Id.* Counsel in MDL 2730 then negotiated to dismiss the later cases and join the Daccache group, thereby concluding the MDL proceedings, and keeping the class action case in the Southern District of Florida. *Id.* The cases were consolidated in an Amended Class Action Complaint asserting various claims against Raymond James, Joel Burstein, People’s Bank entities, Quiros, and William Stenger, including common law fraud, aiding and abetting common law fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, negligence, breach of fiduciary duty, breach of contract, Florida RICO, and conspiracy to violate Florida RICO. *Id.* The Defendants moved to dismiss the amended complaint, and all motions to dismiss were fully briefed when the parties reached this settlement. *Id.*

b. The Other Actions

Several additional investor cases followed the Daccache Action. *Id.* ¶ 7. One action was filed in federal court (*Zhang, et al. v. Raymond James & Associates, Inc.*); an arbitration action was filed with FINRA; two actions were filed in Miami-Dade County Circuit Court (*Citakovic, et al. v. Raymond James & Associates, Inc.* and *Gonzalez Calero, et al. v. Raymond James*); and one action was filed in Collier County Circuit Court (*Waters, et al. v. Raymond James & Associates,*

³ This notice focuses on the litigation and work by Class Counsel and other investors’ counsel, but in no way is intended to denigrate the work by the Receiver, Michael Goldberg, and his counsel, Jeffrey Schneider and Levine Kellogg Lehman Schneider + Grossman LLP, who brought their own case and were instrumental in achieving this excellent result.

Inc.). *Id.*

Discovery in all actions was coordinated, with the Daccache Action taking the lead. *Id.* ¶ 8. The plaintiffs in the Daccache Action filed four motions to compel against Raymond James. *Id.* Additionally, Class Counsel negotiated, prepared, and filed a protocol for Raymond James' production of Electronically Stored Information ("ESI"), and conducted extensive meet and confers with Raymond James on search terms, custodians, and the ESI stipulation. *Id.* As a result of counsel's efforts, Raymond James produced approximately 128,000 pages of documents. *Id.* After extensive negotiations and a hearing, counsel negotiated a confidentiality order and deposition protocol which allowed depositions to proceed efficiently and in a coordinated manner in all of the outstanding actions. *See* Daccache Action at D.E. 136. Depositions were taken of three key Raymond James employees. (Ronzetti Decl. ¶ 8.) Counsel also subpoenaed various non-parties and collected over a million documents in its database from both parties and non-parties. *Id.*

The complexities, novelties and difficulties of the cases against Raymond James were many and varied. *Id.* ¶ 10. Among other things, Raymond James consistently argued that Plaintiffs lacked standing, and that Raymond James was entitled to follow Quiros's instructions, had no dealings with any investor, had no discretion over the funds placed in its accounts, had no actual knowledge that the investors' funds were being stolen, and was not involved with the creation of the offering materials and did not provide the offering materials to the investors. *Id.* Raymond James further argued that certain Limited Partnerships' projects finished construction and opened, and so investors in those Limited Partnerships suffered no losses. *Id.*

Plaintiffs in the Daccache Action also filed a motion for class certification.⁴ *Id.* ¶ 18(e).

B. The Settlement Agreement

Given Raymond James' defenses and the multiple cases filed against Raymond James, the result achieved by the Receiver and Class Counsel is excellent. *Id.* ¶ 11. The Settlement Agreement provides multiple benefits to the Class, including:

- a. Sufficient funds to the Receiver to pay all past-due contractors, all past-due vendors, and trade creditors.
- b. Funds to allow the Receiver to continue construction and operations of the resorts and to ensure that all investors either obtain their permanent residency or, if that is not possible, obtain a refund of their principal investment so they can seek other EB-5 opportunities as quickly as possible, before any threshold on the EB-5 program is raised. The timing of the settlement is critical because the current EB-5 program was set to expire in April and some of the proposals legislators are debating increase the threshold investment above \$500,000.
- c. Relief to the Receivership Estate and investors and avoidance of the expense and delay of litigation. The investor claims involve hotly disputed facts that would require substantial time and expense to litigate, with attendant uncertainty as to the outcome of such litigation and any ensuing appeal.
- d. Some investors are receiving the full principal payoff of their promissory notes. And other investors, virtually all of whom have received or are eligible to receive their green card status, are also receiving a payoff of liens and trade debt on the

⁴ The Court in the Daccache Action agreed with Raymond James' arguments on the timing of class certification and struck Plaintiffs' motion without prejudice with leave to refile.

resorts, along with completed construction and additional assets (such as the Tram Haus Lodge and other mountain related assets), all of which will radically enhance the value of the resort and allow for their sale as a single asset.

Id. In sum, the Settlement Agreement both provides compensation and affords all investors the best possibility of achieving their desired immigration status (and the highest possible return on their investment) or the possibility to move to another EB-5 opportunity that will achieve their desired immigration status and a return on their investment. *Id.* ¶ 12.

The Settlement Agreement also establishes a \$25,000,000 fund to compensate the investors' attorneys' fees and expenses in the investor actions and plaintiffs' attorneys who otherwise claim to represent investors, subject to the approval of this Court. *See* D.E. 315-1, §3(d)(viii). The Receiver supports, and Raymond James does not oppose or otherwise object to, the application by counsel for the award of attorneys' fees and expenses in an aggregate amount not to exceed \$25,000,000. *See id.* Importantly, the creation of this Attorneys' Fund obviates the need for any investors to compensate their attorneys from their own funds. *See* D.E. 315 at 11-12.

The Settlement Agreement required all attorneys who wished to seek compensation from the Attorneys' Fund for services rendered on behalf of investors to submit attorney claim forms within thirty days of the Preliminary Approval Order. *See* D.E. 315-1, §10(a)(i). Class Counsel and the following firms representing investors submitted attorney claim forms: Carlson & Associates, P.A. and Pardo Jackson Gainsburg, PL; Coleman, Yovanovich & Koester, P.A., Law Offices of Place and Hanley, LLC, and Cheffy Passidomo P.A.; Roberto Villasante, Esq.; Genovese, Joblove & Battista, P.A.; Buckner + Miles and Perlman, Bajandas, Yevoli & Albright, P.L. (Ronzetti Decl. ¶ 14.)

No investor has objected to the final approval of the Settlement Agreement or the

\$25,000,000 fund for attorneys' fees.⁵ *Id.* ¶ 15.

The Court preliminarily approved the Settlement Agreement on April 20, 2017. *See* D.E. 318. In its Preliminary Approval Order, the Court approved “[t]he procedures for distribution of the Attorneys’ Fund and for resolution of disputes relating to distribution of the Attorneys’ Fund set forth in paragraph 10 of the Settlement Agreement ...” D.E. 318, ¶ 7. Paragraph 10(a)(ii) of the Settlement Agreement required Class Counsel to confer with all attorneys submitting claims, and if they reach agreement, to notify the Court of their proposed allocation:⁶

Class Counsel shall confer with all attorneys who submitted Attorney Claim Forms (the “Fee Claimants”) in good faith and attempt to agree on the allocation of the Attorneys’ Fund among all Fee Claimants. If Class Counsel and all Fee Claimants agree to the allocation of the Attorneys’ Fund, they shall so notify the Receiver and the District Court in the SEC Action of the proposed allocation of funds among the Fee Claimants and, if approved by the District Court in the SEC Action, the Receiver shall disburse the Attorneys’ Fund in accordance with the Court’s order, subject to Section 10(iv) below.

See D.E. 315-1, §10(a)(ii).

C. The Agreed Allocation of Funds

Class Counsel hereby notifies the Court that it reached agreement on allocation of the \$25,000,000 attorneys’ fees fund as follows:

⁵ Only Defendant Quiros filed a request for extension of time until June 12, 2017. *See* D.E. 336 (“Counsel for Defendant Quiros and counsel for the Receiver, Class Counsel, and Raymond James have been working together in good faith to resolve the issues raised by Defendant Quiros concerning the Agreement and the Proposed Order and anticipate that they will reach agreement prior to the date presently set for the Final Approval Hearing.”). The parties have since reached agreement.

⁶ On June 5, 2017, Class Counsel filed a notice stating that agreement had been reached among all attorneys who submitted claim forms pursuant to Section 10(a)(i) of the Settlement Agreement. *See* D.E. 335.

Law Firms	Case	Agreed Allocation
Class Counsel	Daccache Action	\$19,591,883.09
Carlson & Associates, P.A. and Pardo Jackson Gainsburg, PL	<i>Zhang, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-CV-24655-KMW (S.D. Fla.)	\$2,975,982.24
Coleman, Yovanovich & Koester, P.A., Law Offices of Place and Hanley, LLC, Cheffy Passidomo P.A.	<i>Waters, et al. v. Raymond James & Associates, Inc.</i> , Case No. 11-2016-CA-001936-0001-XX (20th Jud. Cir. Collier Cty)	\$1,686,389.94
Roberto Villasante, Esq.	<i>Gonzalez Calero, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-17840-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$545,596.74
Genovese, Joblove & Battista, P.A.		\$3,235.90
Buckner + Miles; Perlman, Bajandas, Yevoli & Albright, P.L.	<i>Citakovic, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-014261-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$196,912.09

(Ronzetti Decl. ¶ 17.)

D. Time and Expenses

Counsel performed substantial work in litigating these cases, including:

- a. interviewing investors and putative class representatives as part of factual development, reviewing voluminous documents, and investigating the potential claims;
- b. preparing and editing complaints and amended complaints, and performing related legal and factual research;
- c. researching and responding to Raymond James', People's Bank's, Burstein's and Quiros's motions to dismiss and preparing various notices of supplemental authority;
- d. arguing at the hearing on Quiros's and People's Bank's motions to dismiss;
- e. researching and filing an extensive motion for class certification;
- f. pursuing discovery against parties and non-parties efficiently and effectively, including requests for production and interrogatories to Raymond James and to Burstein;

- g. negotiating, preparing, and filing a protocol for Raymond James' production of Electronically Stored Information ("ESI") which included extensive meet and confers with Raymond James on search terms, custodians, and the ESI stipulation;
- h. conducting many meet and confers with Raymond James' counsel on Raymond James' responses to discovery requests, sending follow-up correspondence to Raymond James' counsel, and then researching, preparing, and filing four motions to compel against Raymond James;
- i. noticing, preparing for, and taking the depositions of three key Raymond James employees;
- j. issuing discovery requests to, and taking the depositions of, other parties and non-parties;
- k. issuing subpoenas for documents, and negotiating production of documents with various non-parties;
- l. negotiating search terms, gathering class representatives' documents, reviewing those documents, and responding to Raymond James and other defendants' discovery requests;
- m. defending the depositions of seven class representatives;
- n. reviewing and revising drafts of the settlement agreement, the preliminary approval order, and bar order; and
- o. conferring with the Receiver and his counsel regarding case investigation and strategy, and coordinating litigation with the Receiver.

(Ronzetti Decl. ¶ 18.)

According to the attorney claim forms submitted under oath to the Receiver and Class Counsel, Class Counsel and other investors' counsel have expended the following total lodestar, hours, and expenses:

Law Firms	Case	Total Lodestar	Total Hours	Total Expenses
Class Counsel	Daccache Action	\$7,041,685.80	15,144.11	\$216,907.94
Carlson & Associates, P.A. and Pardo Jackson Gainsburg, PL	<i>Zhang, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-CV-24655-KMW (S.D. Fla.)	\$691,165.00	1,371.50	\$12,241.61
Coleman, Yovanovich & Koester, P.A.; Law Offices of Place and Hanley, LLC; Cheffy Passidomo P.A.	<i>Waters, et al. v. Raymond James & Associates, Inc.</i> , Case No. 11-2016-CA-001936-0001-XX (20th Jud. Cir. Collier Cty)	\$894,665.00	1,919.00	\$4,580.77
Roberto Villasante, Esq.	<i>Gonzalez Calero, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-17840-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$565,500.00	870.00	
Genovese, Joblove & Battista, P.A.		\$3,203.50	8.10	\$32.40
Buckner + Miles; Perlman, Bajandas, Yevoli & Albright, P.L.	<i>Citakovic, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-014261-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$195,622.50	426.00	\$1,289.59
TOTAL		\$9,391,841.80	19,738.71	\$235,052.31

Id. ¶ 26. Counsel provided the figures for their fees using their usual and customary billable rates, and these rates are reasonable based on the market rates for South Florida for complex litigation like this. *Id.* The expenses listed are out-of-pocket expenses advanced in conjunction with the cases. *Id.* Counsel do not seek reimbursement of the expenses separately from the total award. *Id.* These expenses were advanced by counsel entirely at their own risk. *Id.* Had the cases not been successful, these would have been losses to their firms, and they are substantial. *Id.*

The \$25 million fee award counsel seeks equals 16.66% of the settlement amount. *Id.* ¶ 27.

II. ARGUMENT

COUNSEL SHOULD BE AWARDED THE \$25,000,000 ATTORNEYS' FUND AS PROVIDED BY THE SETTLEMENT AGREEMENT AND ALLOCATED BY THEIR AGREEMENT.

A. The Court Should Award the Requested Attorneys' Fees and Expenses.

In the Eleventh Circuit, “attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I Condo. Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *see also Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1339 (S.D. Fla. 2007); *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1333 (S.D. Fla. 2001). The percentage applies to the total benefit being provided or made available to the class. *See Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1295-96 (11th Cir. 1999).

The \$25,000,000 fee fund established by the Settlement Agreement equals only 16.66% of the settlement amount. (Ronzetti Decl. ¶ 27.) That is a modest fee based on Eleventh Circuit precedent, which uses 25% as its benchmark award. *Camden I*, 946 F.2d at 774-775; *Poertner v. Gillette Co.*, 618 F. App’x 624, 628 (11th Cir. 2015) (confirming *Camden I*’s use of 25% as benchmark). “[T]he majority of common fund fee awards fall between 20% to 30% of the fund.” *Camden I*, 946 F.2d at 774. This range may be adjusted in accordance with individual circumstances of each case, using the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 448 F.2d 714 (5th Cir. 1974). *See Camden I*, 946 F.2d at 774-75; *see also Waters*, 190 F.3d at 1294 (reiterating the *Camden I* analysis and affirming award of fees using 30% as the benchmark and then adjusting upward to 33 1/3%). In fact, “federal district courts across the country have, in the class action settlement context, *routinely* awarded class counsel fees in excess of the 25% ‘benchmark,’ even in so-called ‘mega-fund’ cases.” *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1210 (S.D. Fla. 2006) (emphasis added) (awarding fees of 31 1/3 % of settlement

fund).

The 25% benchmark may be adjusted considering the *Johnson* factors, which include: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the “undesirability” of the case; (11) the nature and the length of the professional relationship with the client; and (12) awards in similar cases. *See Camden I*, 946 F.2d at 772 n.3. The Court may also consider the time required to reach settlement, the existence of substantial objections from class members or other parties, and the economics involved in prosecuting a class action. *Id.* at 775.

As explained below, the factors set forth in *Camden I* amply support the full requested award.

1. The Contingent Nature of the Fee, the Financial Burden Carried by Counsel, and the Risks of Prosecuting this Class Action Support the 16.66% Award.

A determination of a fair fee for counsel must include consideration of the contingent nature of the fee, the out-of-pocket sums advanced by counsel, and the fact that the risks of failure and nonpayment in a class action are extremely high. *See Pinto*, 513 F. Supp. 2d at 1339. “A contingency fee arrangement often justifies an increase in the award of attorneys’ fees.” *Behrens v. Wometco Enters.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff’d*, 899 F.2d 21 (11th Cir. 1990). These cases were litigated on a contingency basis by counsel.⁷ (Ronzetti Decl. ¶ 23.) Counsel

⁷ Genovese, Joblove & Battista, P.A. did not file a lawsuit on behalf of the two investors it represents, and only requests \$3,235.90 in incurred fees and expenses. (Ronzetti Decl. ¶ 23 n.8.)

prosecuted these actions on a wholly contingent basis, and since inception counsel have not been compensated for any of these efforts. *Id.* If counsel had not been successful, they would not have received any fee and would have lost \$235,052.31 in expenses advanced on behalf of the investors. *Id.*

By undertaking to represent investors in a complex and sophisticated case such as this one, counsel assumed a substantial financial risk. *Id.* Counsel took on a corporate defendant with vast resources necessary to withstand a lengthy legal battle. *Id.* ¶ 24. For example, in the Daccache Action, Raymond James' defenses led to significant briefing on motions to dismiss and class certification and would have led to further briefing on the merits, at trial, post-trial, and on appeal. *Id.* The risks assumed by counsel in handling these cases on a contingency basis were significant. *Id.* At their inception, it was difficult, if not impossible, to know what results would be obtained, the amount of time that would be involved, the costs necessary to pursue the case, or the time necessary to obtain a successful resolution. *Id.*

2. The Requested Fees Are Below the Market Rate in Complex Contingent Litigation, and Lower Than Awards in Similar Cases.

A fee of approximately 16.66%⁸ of the total monetary benefits obtained is fully consistent with and falls below the range of the customary fee awarded in common fund cases, many of which have awarded a higher percentage. *See Waters*, 190 F.3d 1291 (affirming fee award of 33 1/3 %); *Pinto*, 513 F. Supp. 2d at 1342 (requested 30% fee was “well in line with the bulk of the fee awards in class action litigation”); *Gevaerts v. TD Bank, N.A.*, No. 11:14-CV-20744-RLR, 2015 WL 6751061, at *13 (S.D. Fla. Nov. 5, 2015) (awarding fees equal to 30% of settlement fund,

⁸ The actual figure, 16.51%, is lower because the net award of fees equals \$24,764,947.69 (\$25,000,000 total minus \$235,052.31 in expenses). (Ronzetti Decl. ¶ 28 n.9.)

consistent with “[n]umerous recent decisions within this Circuit [that] have awarded attorneys’ fees up to and in excess of thirty percent”); *Allapattah*, 454 F. Supp. 2d at 1204 (awarding fees of 31 1/3 %); *In re: Terazosin Hydrochloride Antitrust Litig.*, 99–1317–MDL–Seitz (S.D. Fla. April 19, 2005) (awarding fees of 33 1/3 %); *Gutter v. E.I. Dupont De Nemours & Co.*, 95-2152-Civ-Gold (S.D. Fla. May 30, 2003) (33 1/3 %); *Cifuentes v. Regions Bank*, No. 11 CV 23455 FAM, 2014 WL 1153772, at *8 (S.D. Fla. Mar. 20, 2014) (awarding attorneys’ fees equal to 30% of the common fund).

A fee of approximately 16.66% of the monetary benefits provided to the class is also well below the customary fee charged in private, non-class contingency matters, where attorneys often receive between 30%-40% or more of the recovery if successful. *See, e.g., Phemister v. Harcourt Brace Jovanovich, Inc.*, 1984-82 Trade Case. (CCH) ¶¶66,234 at 66,995 (N.D. Ill.) (noting that for contingency fee agreements “the percentages agreed on vary, with one-third being particularly common”); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that “40% is the customary fee in tort litigation”).

Using a lodestar crosscheck, the award has a 2.66 multiplier (\$25,000,000 divided by \$9,391,841.80 = 2.66). (Ronzetti Decl. ¶ 31.) That also is modest. The range is typically 2.26 to 4.5, with many cases awarding much higher multipliers. *See, e.g., Pinto*, 513 F. Supp. 2d at 1344 (noting lodestar multiples “in large and complicated class actions” range from 2.26 to 4.5, while “three appears to be the average”); *Behrens*, 118 F.R.D. at 549 (in complex cases “a lodestar multiple of three appears to be average” and “most lodestar multiples awarded in cases like this are between 3 and 4”); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297 (D.N.J. 1995) (multiple of 9.3 times lodestar); *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138, at *5, 8 (S.D.N.Y. 1992) (multiple of 6 times lodestar); *Cosgrove v. Sullivan*, 759 F.Supp. 166 (S.D.N.Y.

1991) (multiple of 8.74); *Grimshawe v. New York Life Ins. Co.*, No. 96-0746-Civ-Nesbitt (S.D. Fla. 1996) (percentage-based fee award equivalent to a multiple of 8.5).

3. The Novelty and Difficulty of the Questions Involved, the Amount Involved and Result Obtained, and “Undesirability” of the Case Support the Requested Award.

In prosecuting these actions, counsel faced numerous difficult and complex issues. (Ronzetti Decl. ¶ 9.) For example, class action matters are generally complex, but this one is particularly challenging. *Id.* The Court has not yet ruled on Raymond James’ motion to dismiss the Amended Complaint in the Daccache Action. *Id.* Moreover, the class has not yet been certified and certification is often challenging. *Id.*

While counsel have always felt their cause was just and were ultimately able to achieve a favorable settlement, the outcome of these cases was not certain and investors would have faced many risks if these matters had proceeded to trial. *Id.* ¶ 10. The issues raised were complex, requiring significant time and effort to litigate. *Id.* The complexities, novelties and difficulties of the cases against Raymond James were many and varied. *Id.* Among other things, Raymond James consistently argued that investors lacked standing, and that Raymond James was entitled to follow Quiros’s instructions, had no dealings with any investor, had no discretion over the funds placed in its accounts, had no actual knowledge that the investors’ funds were being stolen, and was not involved with the creation of the offering materials and did not provide the offering materials to the investors. *Id.* Raymond James further argued that certain Limited Partnerships’ projects finished construction and opened, and so investors in those Limited Partnerships suffered no losses. *Id.*

In the face of these obstacles, the settlement achieved by the Receiver and Class Counsel is an excellent result. *Id.* ¶ 11. Indeed, the result here is extraordinary, and perhaps best establishes the propriety of the requested fee award. This is a major factor to consider in making a fee award.

See *Pinto*, 513 F. Supp. 2d at 1342 (citing *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“critical factor is the degree of success obtained”)); *Behrens*, 118 F.R.D. at 547-48 (“The quality of work performed in a case that settles before trial is best measured by the benefit obtained.”).

4. The Skill, Experience, and Reputation of Counsel Support the Requested Fee.

This litigation required a high degree of skill and experience given the complexity of the issues. (Ronzetti Decl. ¶ 20.) Counsel are of the highest quality and the work product in this matter reflects a high degree of sophistication and skill. *Id.* Class Counsel, for example, have established their skill, experience, and reputation in repeated cases before this Court, are experienced class action litigation counsel with excellent reputations in the community, and have litigated and served as class counsel in many successful class actions in this district and across the country.⁹ *Id.*

The complex issues raised by these cases required a high degree of skill and experience. *Id.* ¶ 21. Indeed, litigating cases like these requires counsel highly trained in class action law and procedure as well as the specialized issues this case presents. *Id.* Beyond that, Class Counsel’s reputation, diligence, expertise, and skill are reflected in the results they have achieved. They resolved this dispute efficiently despite the potential hurdles they faced and the Raymond James arguments detailed above. *Id.*

This litigation was particularly challenging because Kenny Nachwalter, PA, Raymond James’ counsel, is highly skilled. *Id.* ¶ 22. Kenny Nachwalter is a business litigation firm with

⁹ See, e.g., *In re Managed Care HMO Litig.*, MDL 1334 (S.D. Fla.); *Williams v. Wells Fargo Bank, NA.*, No. 11-cv-21233 (S.D. Fla.); *Saccoccio v. JPMorgan Chase Bank, N.A.*, No. 13-cv-21107 (S.D. Fla.); *Pinto v. Princess Cruise lines, Ltd.*, No. 05-23087-CIV-Altonaga (S.D. Fla.); *LiPuma v. American Express*, No. 04-cv-20314-CIV-Altonaga (S.D. Fla.); *Smith v. First Union Nat’l Bank*, No. 00-4485-CIV-Marra (S.D. Fla.); *Natchitoches Parrish Hosp. v. Tyco (In re: Sharps Containers)*, No. 05-cv-12024 (D. Mass.); *Gallo v. PHH Mortg. Corp.*, No. 12-cv-01117 (D.N.J.); *Bowles v. Fay Servicing*, No. 16-cv-02714 (D.N.J.); *Louisiana Wholesale Drug Co. Inc. v. Becton Dickinson & Co.*, No. 05-cv-1602 (D.N.J.); *Zamora-Garcia v. Moore*, No. M-05-331 (S.D. Tex.); *Bauer-Ramazani v. TIAA-CREF*, No. 1:09-CV-190 (D. Vt.).

South Florida roots that is consistently ranked among the top law firms for complex business litigation and trial proceedings in state and federal courts and arbitral forums. *Id.* This factor thus also favors awarding the requested fee.

5. The Time and Labor of Counsel and Preclusion of Other Work Justify the Requested Fee.

Prosecuting and settling the investors' claims demanded considerable time and labor, thus justifying the requested fee. As stated above, the efforts undertaken included, *inter alia*, extensive investigation into the claims asserted, substantial discovery and motion practice, and vigorous settlement negotiations. In sum, these cases demanded considerable time and labor. According to the claim forms submitted under oath to the Receiver and Class Counsel, counsel spent a total of 19,738.71 hours in these cases. *Id.* ¶ 26.

These were time consuming cases, and the time and energy devoted to these matters necessarily limited the time available for other litigation.

6. The Time Limitations Imposed by the Client or the Circumstances Support the Requested Fee.

This factor recognizes that “priority work that delays the lawyer’s other legal work is entitled to some premium.” *Allapattah*, 454 F. Supp. 2d at 1215 (citing *Johnson*, 488 F.2d at 718). In considering this factor, many courts have found that “time pressures” warrant an increased fee award. *Id.* See also *Reynolds v. Alabama Dept. of Transp.*, 926 F. Supp. 1448, 1458 (M.D. Ala. 1995) (finding evidence of this factor because of the demanding trial schedule and the large number of claims that had to be evaluated and presented in a short time); *Louis v. Nelson*, 646 F. Supp. 1300, 1313 (S.D. Fla. 1986) (“The time pressures of this case were constant. They were imposed, in large part, by the Court, and by the appellate courts, but were also due in part to the exigencies of the situation. The demands of the Court were overwhelming. In sum, the pace was

rather hectic throughout this case.”).

Settlement funds allow those investors who cannot obtain their permanent residency to obtain a refund of their principal investment so they can seek other EB-5 opportunities as quickly as possible, before any threshold on the EB-5 program is raised. (Ronzetti Decl. ¶ 11(b).) The timing of the Settlement Agreement is critical because the current EB-5 program was set to expire in April and some of the proposals legislators are debating increase the threshold above \$500,000. *Id.* It was important for counsel to work quickly so that at-risk investors could obtain a recovery as early as possible. *Id.* ¶ 19.

7. The Nature and the Length of the Professional Relationship with the Client Support the Requested Award.

A higher fee may be warranted in class actions where counsel for the class had no prior relationship with the named plaintiffs. *Allapattah*, 454 F. Supp. 2d at 1216. This is the first time Class Counsel has represented the named class plaintiffs in the Daccache Action, and undoubtedly that is true for most counsel. (Ronzetti Decl. ¶ 25.) Thus, the significance of the risk of representation was not diminished by a long and beneficial previous relationship with the client, and this factor favors a higher fee.

8. The Reaction of the Class Supports the Requested Fee.

No investors filed objections to the Settlement Agreement or to the \$25,000,000 Attorneys’ Fund. *Id.* ¶ 15. The fact that no one in this class of 836 investors has objected further justifies the full fee award. *See Pinto*, 513 F. Supp. 2d at 1343.

All the above factors weigh in favor of awarding counsel \$25,000,000, or 16.66% of the monetary benefits obtained in the Settlement Agreement, well below the Eleventh Circuit’s benchmark.

B. Counsel’s Fee Allocation Agreements Should Be Accepted by the Court.

In its Preliminary Approval Order, the Court approved “[t]he procedures for distribution of the Attorneys’ Fund and for resolution of disputes relating to distribution of the Attorneys’ Fund set forth in paragraph 10 of the Settlement Agreement” D.E. 318, ¶ 7. Class Counsel conferred with all attorneys who submitted claims pursuant to the Settlement Agreement’s procedures, reached agreement on the allocation of the \$25,000,000 fee award, and notified the Receiver and the Court of counsel’s agreement to the proposed allocation of funds. *See* D.E. 335.

The Court should approve the disbursement of the Attorneys’ Fund pursuant to the allocation agreed upon by all participating counsel. Fee allocation agreements among contributing counsel should be accepted by the Court absent good cause to do so. *Allapattah*, 454 F. Supp. 2d at 1226. “[T]he practice of allowing class counsel to distribute a general fee award in an equitable fund case among themselves pursuant to a fee sharing agreement is unexceptional” *In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 216, 223 (2d Cir. 1987). “[T]he attorneys may be in a better position to judge the relative input of their brethren and the value of their services to the class. *Id.* (citing *In re Ampicillin Antitrust Litig.*, 81 F.R.D. 395, 400 (D.D.C. 1978)).

Here, Class Counsel reached agreement with all participating counsel after extensive negotiation pursuant to the procedure approved by the Court. (Ronzetti Decl. ¶ 17.) Those negotiations used the factors the Court itself would consider – the role of each firm, the extent to which the work performed contributed to the outcome, the amount of work performed, and so forth – viewed through Class Counsel’s perspective as appointed Interim Class Counsel in the first-filed investor action. *Id.*

III. CONCLUSION

In accordance with the terms of the Settlement Agreement, Class Counsel, on behalf of all

participating counsel, respectfully notifies the Court of the proposed allocation of the \$25,000,000 Attorneys' Fund for the Court's final approval.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed via CM/ECF and also served on June 12, 2017 on the Receiver and Raymond James & Associates, Inc., via the manner stated in the service list below

By: /s/ Thomas A. Tucker Ronzetti

SERVICE LIST

<p><u>Via E-Mail</u></p> <p>Jeffrey C. Schneider, Esq. jcs@lklsg.com Levine Kellogg Lehman Schneider + Grossman LLP 201 South Biscayne Boulevard 22nd Floor, Miami Center Miami, Florida 33131</p> <p><i>Attorney for the Receiver, Michael Goldberg</i></p>	<p><u>Via E-Mail</u></p> <p>Stanley H. Wakshlag, Esq. shw@knpa.com Deborah S. Corbishley, Esq. dsc@knpa.com Kenney Nachwalter, P.A. Four Seasons Tower Suite 1100 1441 Brickell Avenue Miami, Florida 33131</p> <p><i>Counsel for Raymond James & Associates, Inc.</i></p>
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EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 16-cv-21301-GAYLES

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ARIEL QUIROS, *et al.*

Defendants,

JAY CONSTRUCTION MANAGEMENT, INC.,
et al.,

Relief Defendants, and

Q BURKE MOUNTAIN RESORT, HOTEL AND
CONFERENCE CENTER, L.P., Q BURKE
MOUNTAIN RESORT GP SERVICES, LLC,

Additional Defendants

**DECLARATION OF THOMAS A. TUCKER RONZETTI
IN SUPPORT OF NOTICE OF PROPOSED ALLOCATION OF
THE ATTORNEYS' FUND FOR THE COURT'S FINAL APPROVAL**

I, Thomas A. Tucker Ronzetti, hereby declare that the following is true and correct:

1. I am a shareholder at the law firm of Kozyak, Tropin & Throckmorton LLP (“Kozyak Tropin”), Lead Interim Class Counsel¹ (“Class Counsel”) in *Daccache, et al. v.*

¹ Interim Class Counsel refers to the firms of Kozyak Tropin, Bennett Aiello, Girard Gibbs LLP, and Berman DeValerio. On May 19, 2016, the Court in the Daccache Action appointed Harley S. Tropin, Esq. of Kozyak Tropin Interim Class Counsel. *See* Daccache Action at D.E. 11. On August 18, 2016, the Court in the Daccache Action adopted a Case Management Order which appointed Harley S. Tropin, and in his absence, Thomas A. Tucker Ronzetti, as Chair Lead Counsel, and Paul Aiello of Bennett Aiello, Daniel Girard of Girard Gibbs LLP, and Kathleen M. Donovan-Maher, of Berman DeValerio to the Plaintiffs’ Steering Committee. *See* Daccache Action at D.E. 75.

Raymond James Financial, Inc., et al., Case No. 16-cv-21575-FAM (S.D. Fla.)² (the “Daccache Action”). I am licensed to practice law in the State of Florida, the State of New York, and Washington, D.C., and I am member in good standing of these bars. I make this declaration based on my personal knowledge.

2. I hold a bachelor’s degree in economics from Duke University and a J.D. from the University of Miami School of Law, where I graduated *magna cum laude* in 1992 and served as the editor-in-chief of the University of Miami Law Review.

3. Following graduation from law school I served as law clerk to the Honorable Edward B. Davis, District Judge for the Southern District of Florida. I then worked for a year in commercial litigation at Valdes-Fauli, Cobb, Bischoff & Kriss in Miami. Following that, I served as an assistant county attorney for Miami-Dade County for over seven years, handling trials and appeals in commercial, construction, civil rights, and labor and employment matters. Since October 2001, I have worked as a trial and appellate attorney at Kozyak Tropin, a law firm located in Coral Gables, Florida, handling complex commercial and class action litigation. I have personally been involved in litigating over 30 class actions. Since 1992, I have taught at the University of Miami School of Law, first serving for 12 years as an instructor in legal research, reasoning, and writing, and then as an adjunct professor teaching litigation skills and other classes.

4. I provide this declaration in support of Counsel’s Notice of Proposed Allocation of the Attorneys’ Fund for Court’s Final Approval. The Notice follows the Settlement Agreement and Release in the above-referenced action (the “Settlement Agreement”), reached

² The Daccache Action was the first-filed investor action against Raymond James regarding Jay Peak.

between the Receiver, Interim Class Counsel, and Raymond James & Associates, Inc. (“Raymond James”). *See* DE 315-1. The settlement of this case resulted after hard-fought litigation in risky claims against Raymond James, a corporate defendant with vast resources necessary to withstand a lengthy legal battle.

The Raymond James Litigation³

5. The settlement in this case is the result of coordinated litigation by the Receiver and Class Counsel in the Daccache Action and the other actions filed by the investors.

6. Filed on May 3, 2016, the Daccache Action was the first-filed investor action against Raymond James relating to Jay Peak. Three other federal cases soon followed both here and in Vermont, and multidistrict litigation was filed, *In re Jay Peak, Vermont EB-5 Investor Litigation*, MDL 2730. Counsel in MDL 2730 then negotiated to dismiss the later cases and join the Daccache group, thereby concluding the MDL proceedings and keeping the class action case in the Southern District of Florida. The cases were consolidated in an Amended Class Action Complaint asserting various claims against Raymond James, Joel Burstein, People’s Bank entities, Quiros, and William Stenger, including common law fraud, aiding and abetting common law fraud, aiding and abetting breach of fiduciary duty, civil conspiracy, negligence, breach of fiduciary duty, breach of contract, Florida RICO, and conspiracy to violate Florida RICO. The Defendants moved to dismiss the amended complaint, and all motions to dismiss were fully briefed when the parties reached this settlement.

7. Several additional investor cases followed the Daccache Action. One action was

³ The following paragraphs describe the litigation and work by Class Counsel and other investors’ counsel, but in no way is intended to denigrate the work by the Receiver, Michael Goldberg, and his counsel, Jeffrey Schneider and Levine Kellogg Lehman Schneider + Grossman LLP, who brought their own case and were instrumental in achieving this excellent result.

filed in federal court (*Zhang, et al. v. Raymond James & Associates, Inc.*); an arbitration action was filed with FINRA; two actions were filed in Miami-Dade County Circuit Court (*Citakovic, et al. v. Raymond James & Associates, Inc.* and *Gonzalez Calero, et al. v. Raymond James*); and one action was filed in Collier County Circuit Court (*Waters, et al. v. Raymond James & Associates, Inc.*).

8. Discovery in all actions was coordinated, with the Daccache Action taking the lead. The plaintiffs in the Daccache Action filed four motions to compel against Raymond James. Additionally, Class Counsel negotiated, prepared, and filed a protocol for Raymond James' production of Electronically Stored Information ("ESI"), and conducted extensive meet and confers with Raymond James on search terms, custodians, and the ESI stipulation. As a result of counsel's efforts, Raymond James produced approximately 128,000 pages of documents. After extensive negotiations and a hearing, counsel negotiated a confidentiality order and deposition protocol which allowed depositions to proceed efficiently and in a coordinated manner in all of the outstanding actions. *See* Daccache Action at D.E. 136. Depositions were taken of three key Raymond James employees. Counsel also subpoenaed various non-parties and collected over a million documents in its database from both parties and non-parties.

9. In prosecuting these actions, counsel faced numerous difficult and complex issues. For example, class action matters are generally complex, but this one is particularly challenging. The Court has not yet ruled on Raymond James' motion to dismiss attacking the Amended Complaint in the Daccache Action. Moreover, the class has not yet been certified and certification is often challenging.

10. While counsel have always felt their cause was just and were ultimately able to

achieve a favorable settlement, the outcome of these cases was not certain and investors would have faced many risks if these matters had proceeded to trial. The issues raised were complex, requiring significant time and effort to litigate. The complexities, novelties, and difficulties of the cases against Raymond James were many and varied. Among other things, Raymond James consistently argued that investors lacked standing, and that Raymond James was entitled to follow Quiros's instructions, had no dealings with any investor, had no discretion over the funds placed in its accounts, had no actual knowledge that the investors' funds were being stolen, was not involved with the creation of the offering materials, and did not provide the offering materials to investors. Raymond James further argued that certain Limited Partnerships' projects finished construction and opened, and so investors in those Limited Partnerships suffered no losses.

The Settlement Agreement

11. Given Raymond James' defenses and the multiple cases filed against Raymond James, the result achieved by the Receiver and Class Counsel is excellent. The Settlement Agreement provides multiple benefits to the Class, including:

- a. Sufficient funds to the Receiver to pay all past-due contractors, all past-due vendors, and trade creditors.
- b. Funds to allow the Receiver to continue construction and operations of the resorts and to ensure that all investors either obtain their permanent residency or, if that is not possible, obtain a refund of their principal investment so they can seek other EB-5 opportunities as quickly as possible, before any threshold on the EB-5 program is raised. The timing of the settlement is critical because the current EB-5 program was set to expire in April and some of the proposals

legislators are debating increase the threshold above \$500,000.

- c. Relief to the Receivership Estate and investors and avoidance of the expense and delay of litigation. The investor claims involve hotly disputed facts that would require substantial time and expense to litigate, with attendant uncertainty as to the outcome of such litigation and any ensuing appeal.
- d. Some investors are receiving the full principal payoff of their promissory notes. And other investors, virtually all of whom have received or are eligible to receive their green card status, are also receiving a payoff of liens and trade debt on the resorts, along with completed construction and additional assets (such as the Tram Haus Lodge and other mountain related assets), all of which will radically enhance the value of the resort and allow for their sale as a single asset.

12. In sum, the Settlement Agreement both provides compensation and affords all investors the best possibility of achieving their desired immigration status (and the highest possible return of their investment) or the possibility to move to another EB-5 opportunity that will achieve their desired immigration status and a return on their investment.

13. The Settlement Agreement also establishes a \$25,000,000 fund to compensate the investors' attorneys' fees and expenses in the investor actions and plaintiffs' attorneys who otherwise claim to represent investors, subject to the approval of this Court. *See* D.E. 315-1, §3(d)(viii). The Receiver supports, and Raymond James does not oppose or otherwise object to, the application by counsel for the award of attorneys' fees and expenses in an aggregate amount not to exceed \$25,000,000. *See id.* The creation of this Attorneys' Fund obviates the need for any Jay Peak or Q Burke investors to compensate their attorneys from their own funds. *See* D.E. 315 at 11-12.

14. The Settlement Agreement provides that all attorneys who wished to seek compensation from the Attorneys' Fund for services rendered on behalf of investors had to submit attorney claim forms within thirty days after the Preliminary Approval Order. *See* D.E. 315-1, §10(a)(i). Class Counsel and the following firms representing investors submitted attorney claim forms: Carlson & Associates, P.A. and Pardo Jackson Gainsburg, PL; Coleman, Yovanovich & Koester, P.A., Law Offices of Place and Hanley, LLC, and Cheffy Passidomo P.A.; Roberto Villasante, Esq.; Genovese, Joblove & Battista, P.A.; Buckner + Miles and Perlman, Bajandas, Yevoli & Albright, P.L.

15. No investors filed objections to the Settlement Agreement or to the \$25,000,000 fund for attorneys' fees.⁴

16. The Court preliminarily approved the Settlement Agreement on April 20, 2017. *See* D.E. 318. In its Preliminary Approval Order, the Court approved “[t]he procedures for distribution of the Attorneys' Fund and for resolution of disputes relating to distribution of the Attorneys' Fund set forth in paragraph 10 of the Settlement Agreement” D.E. 318, ¶ 7. Paragraph 10(a)(ii) of the Settlement Agreement required Class Counsel to confer with all attorneys submitting claims, and if they reach agreement, to notify the Court of their proposed allocation:⁵

⁴ Only Defendant Quiros filed a request for extension of time until June 12, 2017. *See* D.E. 336 (“Counsel for Defendant Quiros and counsel for the Receiver, Class Counsel, and Raymond James have been working together in good faith to resolve the issues raised by Defendant Quiros concerning the Agreement and the Proposed Order and anticipate that they will reach agreement prior to the date presently set for the Final Approval Hearing.”). The parties have since reached agreement.

⁵ On June 5, 2017, Class Counsel filed a notice stating that agreement had been reached among all attorneys who submitted claim forms pursuant to Section 10(a)(i) of the Settlement Agreement. *See* D.E. 335.

Class Counsel shall confer with all attorneys who submitted Attorney Claim Forms (the “Fee Claimants”) in good faith and attempt to agree on the allocation of the Attorneys’ Fund among all Fee Claimants. If Class Counsel and all Fee Claimants agree to the allocation of the Attorneys’ Fund, they shall so notify the Receiver and the District Court in the SEC Action of the proposed allocation of funds among the Fee Claimants and, if approved by the District Court in the SEC Action, the Receiver shall disburse the Attorneys’ Fund in accordance with the Court’s order, subject to Section 10(iv) below.

See D.E. 315-1, §10(a)(ii).

The Agreed Allocation of Funds

17. Class Counsel reached agreement with all participating counsel after extensive negotiation pursuant to the procedure approved by the Court. Those negotiations used the factors the Court itself would consider – the role of each firm, the extent to which the work performed contributed to the outcome, the amount of work performed, and so forth – viewed through Class Counsel’s perspective as appointed Interim Class Counsel in the first-filed investor action. The agreed allocation of the \$25,000,000 attorneys’ fees fund is as follows:

Law Firms	Case	Agreed Allocation
Class Counsel	Daccache Action	\$19,591,883.09
Carlson & Associates, P.A. and Pardo Jackson Gainsburg, PL	<i>Zhang, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-CV-24655-KMW (S.D. Fla.)	\$2,975,982.24
Coleman, Yovanovich & Koester, P.A., Law Offices of Place and Hanley, LLC, Cheffy Passidomo P.A.	<i>Waters, et al. v. Raymond James & Associates, Inc.</i> , Case No. 11-2016-CA-001936-0001-XX (20th Jud. Cir. Collier Cty)	\$1,686,389.94
Roberto Villasante, Esq.	<i>Gonzalez Calero, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-17840-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$545,596.74
Genovese, Joblove & Battista, P.A.		\$3,235.90
Buckner + Miles; Perlman, Bajandas, Yevoli & Albright, P.L.	<i>Citakovic, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-014261-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$196,912.09

Time and Expenses

18. Counsel performed substantial work in litigating these cases, including:
- a. interviewing investors and putative class representatives as part of factual development, reviewing voluminous documents, and investigating the potential claims;
 - b. preparing and editing complaints and amended complaints, and performing related legal and factual research;
 - c. researching and responding to Raymond James', People's Bank's, Burstein's and Quiros's motions to dismiss and preparing various notices of supplemental authority;
 - d. arguing at the hearing on Quiros's and People's Bank's motions to dismiss;
 - e. researching and filing an extensive motion for class certification;⁶
 - f. pursuing discovery against parties and non-parties efficiently and effectively, including requests for production and interrogatories to Raymond James and to Burstein;
 - g. negotiating, preparing, and filing a protocol for Raymond James' production of Electronically Stored Information ("ESI") which included extensive meet and confers with Raymond James on search terms, custodians, and the ESI stipulation;
 - h. conducting many meet and confers with Raymond James' counsel on Raymond James' responses to discovery requests, sending follow-up correspondence to

⁶ The Court in the Daccache Action agreed with Raymond James' arguments on the timing of class certification and struck Plaintiffs' motion without prejudice with leave to refile.

Raymond James' counsel, and then researching, preparing, and filing four motions to compel against Raymond James;

- i. noticing, preparing for, and taking the depositions of three key Raymond James employees;
- j. issuing discovery requests to, and taking the depositions of, other parties and non-parties;
- k. issuing subpoenas for documents, and negotiating production of documents with various non-parties;
- l. negotiating search terms, gathering class representatives' documents, reviewing those documents, and responding to Raymond James and other defendants' discovery requests;
- m. defending the depositions of seven class representatives;
- n. reviewing and revising drafts of the settlement agreement, the preliminary approval order and bar order; and
- o. conferring with the Receiver and his counsel regarding case investigation and strategy, and coordinating litigation with the Receiver.

19. It was important for counsel to work quickly so that at-risk investors could obtain a recovery as early as possible.

20. This litigation required a high degree of skill and experience given the complexity of the issues. Counsel are of the highest quality and the work product in this matter reflects a high degree of sophistication and skill. Class Counsel, for example, have established their skill, experience, and reputation in repeated cases before this Court, are experienced class action litigation counsel with excellent reputations in the community, and have litigated and

served as class counsel in many successful class actions in this district and across the country.⁷

21. The complex issues raised by these cases required a high degree of skill and experience. Indeed, litigating cases like these requires counsel highly trained in class action law and procedure as well as the specialized issues this case presents. Beyond that, Class Counsel's reputation, diligence, expertise, and skill are reflected in the results they have achieved. They resolved this dispute efficiently despite the potential hurdles they faced and the Raymond James arguments detailed above.

22. The litigation was particularly challenging because Kenny Nachwalter, PA, Raymond James' counsel, is highly skilled. Kenny Nachwalter is a business litigation firm with South Florida roots that is consistently ranked among the top law firms for complex business litigation and trial proceedings in state and federal courts and arbitral forums.

23. These cases were litigated on a contingency basis by counsel.⁸ Counsel prosecuted these actions on a wholly contingent basis, and since inception counsel have not been compensated for any of these efforts. If counsel had not been successful, they would not have received any fee and would have lost \$235,052.31 in out-of-pocket expenses they advanced on behalf of the investors. By undertaking to represent investors in a complex and

⁷ See, e.g., *In re Managed Care HMO Litig.*, MDL 1334 (S.D. Fla.); *Williams v. Wells Fargo Bank, NA.*, No. 11-cv-21233 (S.D. Fla.); *Saccoccio v. JPMorgan Chase Bank, N.A.*, No. 13-cv-21107 (S.D. Fla.); *Pinto v. Princess Cruise Lines, Ltd.*, No. 05-23087-CIV-Altonaga (S.D. Fla.); *LiPuma v. American Express*, No. 04-cv-20314-CIV-Altonaga (S.D. Fla.); *Smith v. First Union Nat'l Bank*, No. 00-4485-CIV-Marra (S.D. Fla.); *Natchitoches Parrish Hosp. v. Tyco (In re: Sharps Containers)*, No. 05-cv-12024 (D. Mass.); *Gallo v. PHH Mortg. Corp.*, No. 12-cv-01117 (D.N.J.); *Bowles v. Fay Servicing*, No. 16-cv-02714 (D.N.J.); *Louisiana Wholesale Drug Co. Inc. v. Becton Dickinson & Co.*, No. 05-cv-1602 (D.N.J.); *Zamora-Garcia v. Moore*, No. M-05-331 (S.D. Tex.); *Bauer-Ramazani v. TIAA-CREF*, No. 1:09-CV-190 (D. Vt.).

⁸ Only Genovese, Joblove & Battista, P.A. did not file a lawsuit on behalf of the two investors it represents, and is only requesting \$3,235.90 in incurred fees and expenses.

sophisticated case such as this one, counsel assumed a substantial financial risk.

24. Counsel took on a corporate defendant with vast resources necessary to withstand a lengthy legal battle. For example, in the Daccache Action, Raymond James’ defenses led to significant briefing on motion to dismiss and class certification and would have led to further briefing on the merits, at trial, post-trial, and on appeal. The risks assumed by counsel in handling these cases on a contingency basis were significant. At inception, it was difficult, if not impossible, to know what results would be obtained, the amount of time that would be involved, the costs necessary to pursue the case, or the time necessary to obtain a successful resolution.

25. This is the first time that Class Counsel has represented the named class plaintiffs in the Daccache Action, and undoubtedly this is true for most counsel.

26. According to the attorney claim forms submitted under oath to the Receiver and Class Counsel, Class Counsel and other investors’ counsel have expended the following total lodestar, hours and expenses:

Law Firms	Case	Total Lodestar	Total Hours	Total Expenses
Class Counsel	Daccache Action	\$7,041,685.80	15,144.11	\$216,907.94
Carlson & Associates, P.A. and Pardo Jackson Gainsburg, PL	<i>Zhang, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-CV-24655-KMW (S.D. Fla.)	\$691,165.00	1,371.50	\$12,241.61
Coleman, Yovanovich & Koester, P.A.; Law Offices of Place and Hanley, LLC; Cheffy Passidomo P.A.	<i>Waters, et al. v. Raymond James & Associates, Inc.</i> , Case No. 11-2016-CA-001936-0001-XX (20th Jud. Cir. Collier Cty)	\$894,665.00	1,919.00	\$4,580.77
Roberto Villasante, Esq.	<i>Gonzalez Calero, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-17840-CA-01	\$565,500.00	870.00	

	(11th Jud. Cir. Miami-Dade Cty)			
Genovese, Joblove & Battista, P.A.		\$3,203.50	8.10	\$32.40
Buckner + Miles; Perlman, Bajandas, Yevoli & Albright, P.L.	<i>Citakovic, et al. v. Raymond James & Associates, Inc. et al.</i> , Case No. 16-014261-CA-01 (11th Jud. Cir. Miami-Dade Cty)	\$195,622.50	426.00	\$1,289.59
TOTAL		\$9,391,841.80	19,738.71	\$235,052.31

Counsel provided the figures for their fees using their usual and customary billable rates, and these rates are reasonable based on the market rates for South Florida for complex litigation like this. The expenses listed are out-of-pocket expenses advanced in conjunction with the cases. Counsel do not seek reimbursement of the expenses separately from the total award. These expenses were advanced by Counsel entirely at their own risk. Had the cases not been successful, these would have been losses to their firms, and they are substantial.

27. The \$25,000,000 fee award that counsel seeks equals 16.66% of the settlement amount, a modest fee based on Eleventh Circuit precedent, which uses 25% as its benchmark award. *Camden I, Condo Ass’n, Inc. v. Dunkle*, 946 F.2d 768, 774-75 (11th Cir. 1991); *Poertner v. Gillette Co.*, 618 F. App’x 624, 628 (11th Cir. 2015) (confirming *Camden I*’s use of 25% as benchmark). “[T]he majority of common fund fee awards fall between 20% to 30% of the fund.” *Camden I*, 946 F.2d at 774. This range may be adjusted in accordance with individual circumstances of each case, using the factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 448 F.2d 714 (5th Cir. 1974). See *Camden I*, 946 F.2d at 774-75; see also *Waters v. Int’l Precious Metals Corp.*, 190 F.3d 1291, 1294 (11th Cir. 1999) (reiterating the *Camden I* analysis and affirming award of fees using 30% as the benchmark and then adjusting upward to 33 1/3%).

28. A fee of approximately 16.66%⁹ of the total monetary benefits obtained is fully consistent with and falls below the range of the customary fee awarded in common fund cases, many of which have awarded a higher percentage. *See Waters*, 190 F.3d 1291 (affirming fee award of 33 1/3 %); *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1342 (S.D. Fla. 2007) (requested 30% fee was “well in line with the bulk of the fee awards in class action litigation”); *Gevaerts v. TD Bank, N.A.*, No. 11:14-CV-20744-RLR, 2015 WL 6751061, at *13 (S.D. Fla. Nov. 5, 2015) (awarding fees equal to 30% of settlement fund, consistent with “[n]umerous recent decisions within this Circuit [that] have awarded attorneys’ fees up to and in excess of thirty percent”); *Allapattah Servs. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1226 (S.D. Fla. 2006) (awarding fees of 31 1/3 %); *In re: Terazosin Hydrochloride Antitrust Litig.*, 99–1317–MDL–Seitz (S.D. Fla. April 19, 2005) (awarding fees of 33 1/3 %); *Gutter v. E.I. Dupont De Nemours & Co.*, 95-2152-Civ-Gold (S.D. Fla. May 30, 2003) (33 1/3 %); *Cifuentes v. Regions Bank*, No. 11 CV 23455 FAM, 2014 WL 1153772, at *8 (S.D. Fla. Mar. 20, 2014) (awarding attorneys’ fees equal to 30% of the common fund).

29. In the Eleventh Circuit, “attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.” *Camden I*, 946 F.2d at 774; *see also Pinto*, 513 F. Supp. 2d at 1339; *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d at 1323, 1333 (S.D. Fla. 2001). The percentage applies to the total benefit being provided or made available to the class. *See Waters*, 190 F.3d at 1295-96.

30. A fee of approximately 16.66% of the monetary benefits provided to the class is also well below the customary fee charged in private, non-class contingency matters, where

⁹ The actual figure, 16.51%, is lower because the net award of fees equals \$24,764,947.69 (\$25,000,000 total minus \$235,052.31 in expenses).

attorneys often receive between 30%-40% or more of the recovery if successful. *See, e.g., Phemister v. Harcourt Brace Jovanovich, Inc.*, 1984-82 Trade Case. (CCH) ¶¶66,234 at 66,995 (N.D. Ill.) (noting that for contingency fee agreements “the percentages agreed on vary, with one-third being particularly common”); *Kirchoff v. Flynn*, 786 F.2d 320, 323 (7th Cir. 1986) (observing that “40% is the customary fee in tort litigation”).

31. Using a lodestar crosscheck, the award has a 2.66 multiplier (\$25,000,000 divided by \$9,391,841.80 = 2.66). That also is modest, because the range is typically 2.26 to 4.5, with many cases awarding much higher multipliers. *See Pinto*, 513 F. Supp. 2d at 1344 (noting lodestar multiples “in large and complicated class actions” range from 2.26 to 4.5, while “three appears to be the average”); *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 549 (S.D. Fla. 1988) (in complex cases “a lodestar multiple of three appears to be average” and “most lodestar multiples awarded in cases like this are between 3 and 4”); *Weiss v. Mercedes-Benz of N. Am. Inc.*, 899 F. Supp. 1297 (D.N.J. 1995) (multiple of 9.3 times lodestar); *In re RJR Nabisco, Inc. Sec. Litig.*, 1992 WL 210138, at *5, 8 (S.D.N.Y. 1992) (multiple of 6 times lodestar); *Cosgrove v. Sullivan*, 759 F.Supp. 166 (S.D.N.Y. 1991) (multiple of 8.74); *Grimshawe v. N.Y. Life Ins. Co.*, No. 96-0746-Civ-Nesbitt (S.D. Fla. 1996) (percentage-based fee award equivalent to a multiple of 8.5).

32. The Receiver, Class Counsel, and other investors’ counsel are proud of the success achieved by the Settlement Agreement. This Settlement Agreement affords all investors an excellent recovery with the best possibility of achieving their desired immigration status (and the highest possible return of their investment) or the possibility to move to another EB-5 opportunity that will achieve their desired immigration status and a return on their investment.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 12, 2017.

/s/ Thomas A. Tucker Ronzetti
Thomas A. Tucker Ronzetti, Esq.

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